

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR BINDING

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the
District of Columbia Circuit

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GEORGE CAMPBELL, JR., ... APPELLANT,
vs.
THE UNITED STATES OF AMERICA, ... APPELLEE.

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APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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PROCEEDINGS

(4)

Thereupon

GLADYS E. JOHNSON

was called as a witness for and on behalf of the United States and being then and there duly sworn by the Deputy Clerk, assumed the witness stand and testified as follows:

DIRECT EXAMINATION

BY MR. CAPUTY:

Q Please keep your voice so that his Honor and the members of the jury and the defendant Campbell and his lawyer can hear you. State your name.

A Gladys E. Johnson.

Q Where do you live now?

A 1321 Fairmont Street, Northwest.

Q Directing your attention to December of 1955 where were you living?

A 1328 Columbia Road.

Q Where?

A 1328 Columbia Road, Northwest.

Q Were you living there on December 26th, 1955?

A Yes, sir.

Q And with whom did you live there at 1328 Columbia Road Northwest on December 26?

A I lived with my mother, my sister and my brothers.

Q How many brothers?

A Two.

Q How old are your brothers?

A One is one and one is fifteen.

Q And how old are the sisters?

A Two and three.

Q Do you know one by the name of George Campbell, Jr.?

A Yes, sir.

Q Do you see him here in the courtroom?

A Yes, sir.

Q Where was George Campbell living on December 26, 1955?

A 1328 Columbia Road, Northwest.

Q Is that the same place that you were living with your mother and brothers and sisters?

A Yes, sir.

(5)

Q Do you see George Campbell here in the courtroom?

(5)

A Yes, sir.

Q Would you point him out, please?

A (Indicating).

Q Which one?

A The man with the white shirt on.

MR. CAPUTY: May the record show, if your Honor please, that the witness has identified the defendant.

THE COURT: The record will so indicate.

BY MR. CAPUTY:

Q Now on December 26, 1955, were you home that day?

A Yes, sir.

Q Were you home all day?

(6)

A Yes, sir.

Q Can you tell us whether your mother and your older brother and younger members of the family were home?

A My mother and my big brother was home until 1 p.m.

Q Then what happened after 1 p.m.?

A George and mother went out and about five minutes after my brother went out.

Q And who remained in the house then?

A My two little sisters and my one little brother.

Q Can you talk a little louder?

A My two little sisters and my little brother.

Q Were you home all day?

A Yes, sir.

Q Now after your mother and George Campbell left, did you see George Campbell again on that day?

A Yes, sir.

Q At what time was it that you saw him?

A Between 7:30 and 8.

Q And where did you see him?

A He came to my house.

Q To the house?

A Yes, sir.

Q Now, would you tell us what, if anything, he said when he came to the house on December the 26th?

A He asked me to fix him something to eat. (6)

Q Did you? (7)

A Yes, sir.

Q And what happened after that, if anything?

A He went and I fixed him something to eat and he went in the room and laid down on the bed and went to sleep. After I fixed him something to eat. I went to the bed and shook him but he wouldn't wake up, so I went on back in the kitchen and took the food off the table and put it on the stove.

Q Now before we proceed, how old are you?

A Thirteen years old.

Q Do you go to school?

A Yes, sir.

Q Where?

A Banneker Junior High.

Q What grade are you in?

A Seventh.

Q Do you know what it is to take an oath?

A Yes, sir.

Q And what is it?

A To tell the truth.

Q Now, continue. After you finished preparing the dinner, what happened?

A I went back in the bedroom, sit down by the window. George (8) woke up and asked me where was his food? I told him it was out there in the kitchen on the stove. And he went out there, looked for it. Said he couldn't find it and he asked me to get it for him. And I went in the kitchen and took it off the stove and put it on the table. He sit down and eat it. And then he came back in the room and pulled out of the chair and he pulled me in the kitchen and there was a chair setting between the door--

MR. LANE: Your Honor, I am having difficulty hearing the witness.

THE COURT: Keep your voice up. Talk real slow. Don't try to talk so fast. Talk slow and talk loud.

BY MR. CROFTY:

Q Talk so that I can hear you back here.

A --and he pulled me in the kitchen and sit down in the chair and pulled me on his lap. And then the kids came out in the kitchen, my sisters,

A Yes, sir.

(11)

Q About what time?

A About a half hour or an hour after George left or maybe longer.

Q Now all that you testified to took place in the District of Columbia?

A Yes, sir.

Q Were you at any time at the Sex Squad of the Police Department? (12)

A Yes, sir.

Q And when you were there was the Defendant Campbell there?

A Yes, sir.

Q And there at the Sex Squad of the Police Department did you say anything?

A Yes, sir, I told them my story.

Q And was he there at the time?

A Yes, sir.

Q Was anything said by him at the time when you told your story?

A He said something but I don't remember what he said.

MR. CAPUTY: You may examine.

CROSS-EXAMINATION

BY MR. LANE:

Q Young lady, you were at the Sex Squad a considerable period of time, were you not?

A Yes, sir.

Q And you say that George Campbell said something and you can't remember what it was?

A No, sir.

Q What did you have to say at the Sex Squad?

A I told them what happened.

Q Who was there?

A Mrs. Smith, the policewoman.

(13)

Q Who?

A Mrs. Smith, the policewoman.

Q Was she here this morning?

A No, sir.

Q And what did she say?

A She just told me to tell my story.

Q And was there any prompting on the part of the policewoman?

A I beg your pardon.

(13)

Q Was there any prompting on the part of the policewoman?

A I don't understand you.

Q Did the policewoman tell you what to say?

A No, sir.

Q She didn't? Didn't you at first tell the policewoman at the Sex Squad that George tried to --and then at her prompting, you said he did?

A I don't understand you.

THE COURT: I don't think the witness understands the word "prompting," Mr. Lane.

MR. LANE: Very well, your Honor, I will rephrase it.

BY MR. LANE:

Q Didn't you say, Miss Johnson, at the Sex Squad headquarters at first that George had tried to do it?

A Yes, sir.

Q You did.

(14)

A Yes, sir.

Q Then when the policewoman spoke to you, you then said that he did it, is that correct?

A I said that he was, had pushed his thing, had pushed his private--

THE COURT: Keep your voice up.

THE WITNESS: I told her that he pushed his private up in me. And I screamed.

BY MR. LANE:

Q Didn't you just say a moment ago in response to my question that you had first told this policewoman that George had tried to do it?

A That is what he said. He said that I should make it finish, but I thought that he had already finished.

Q You say you thought he had already finished?

A Yes, sir.

Q Now, Miss Johnson, you know a considerable lot about this sexual relationship, do you not?

MR. CAPUTY: I object.

THE COURT: To what do you object, Mr. Caputy?

MR. CAPUTY: Well, I realize it is a preliminary question, but I object to what might follow as to any other prior acts because it is immaterial with a child under 16 years of age.

MR. LANE: If your Honor please, excuse me.

(14)

MR. CAPUTY: And any conduct that might have existed, if any, is improper. And it is not admissible. (15)

MR. LANE: Your Honor, I haven't asked the question yet.

THE COURT: I will sustain the objection to the form of this question, Mr. Lane. You may rephrase your question to bring out the point that you want to make.

BY MR. LANE:

Q Now, Miss Johnson, you have had a previous boy friend, have you not?

A Yes.

Q Pardon.

A Yes.

Q And his name is Kent, is that correct?

A Yes.

Q Do you still see Kent?

A No, sir.

Q How often did you see him?

MR. CAPUTY: I object, if your Honor please. It is immaterial. That has no bearing upon this case and that is the basis of my objection. No relevancy.

THE COURT: What do you say is the relevancy, Mr. Lane?

MR. LANE: If your Honor please, may we approach the Bench?

THE COURT: You may.

(At the Bench.)

MR. LANE: If your Honor please, we have no medical testimony as yet in the case and I intend to show that this girl, that is not the first time that she had sexual relations. (16)

THE COURT: But she is a minor. She can't consent. What difference does it make? I mean, throwing out any element of force or anything of that kind, if she is 13 years of age, it wouldn't make any difference.

MR. LANE: Well, I would like to know now if Dr. Perry is going to testify?

MR. CAPUTY: Yes, he is.

MR. LANE: I think I will abandon that, your Honor.

THE COURT: Very well.

(End of Bench conference.)

BY MR. LANE:

Q Now, Miss Johnson, have you talked to anyone since this occurrence? (16)

THE COURT: About this occurrence?

MR. LANE: Since this occurrence, yes, your Honor, concerning this matter.

THE WITNESS: You mean after I had talked to the District Attorney and the Policeman?

BY MR. LANE:

Q Yes.

A I have talked to my mother.

Q You have discussed it with your mother, have you?

A Yes, sir.

Q And you have discussed it with your brother, have you not? (17)

THE COURT: You will have to keep your voice up. These jurors can't hear you. What was your answer, did you discuss it with your mother?

THE WITNESS: Yes, sir.

BY MR. LANE:

Q And you have discussed it with your brother?

A No, sir.

Q You have not?

A No, sir.

Q Now, while you were at the Sex Squad, Miss Johnson, George was there, was he not?

A Yes.

Q And did he not deny that the had done this?

A Yes.

Q He did deny it?

A No, he did not deny it. I mean, he denied he didn't do it.

Q Would you say that again, please?

A He denied that he didn't do it.

Q He said he didn't do it?

A Yes, sir.

Q All right.

Now, during the time that you were there, did he demand that the police officers make some sort of test?

A Not that I remember. (18)

Q Didn't he request the police department to have you examined at the D. C. General Hospital?

A I don't know. He didn't say it.

(18)

Q You didn't hear that?

A No, sir.

Q Did you hear him make any demands for tests made upon himself?

A No, sir.

THE COURT: What is your answer?

THE WITNESS: No, sir.

BY MR. LANE:

Q You didn't hear that?

A No, sir.

Q Now, Miss Johnson, as a matter of fact, Mr. Campbell was presently living with your mother, is that correct?

A Yes, sir.

Q And they were living together as husband and wife, is that correct?

MR. CAPUTY: I object.

THE WITNESS: No, sir.

THE COURT: What is the materiality of this question?

MR. LANE: Your Honor, I want to show the close relationship between these people.

MR. CAPUTY: That has no relevancy, if your Honor please. I don't know what he intends to show by--he asked if there is a close relationship (19) but that is as far as he should go, your Honor.

THE COURT: I will sustain the objection.

BY MR. LANE:

Q Now, Miss Johnson, as a matter of fact, didn't Mr. Campbell come on December 26 at about 5:30 p.m. and ask for some food?

A No, sir. It wasn't 5:30.

Q What time was it?

A Between 7:30, 8 o'clock.

Q 7:30 and 9?

A 7:30 and 8.

Q He asked for some food, is that correct?

A Yes, sir.

Q Now, you had a girl friend there with you, did you not?

A Yes, sir.

Q Pardon?

A Yes, sir.

Q Now between the time that Mr. Campbell got home and I believe (19)
you did say that he went to bed, is that correct?

A He laid across the bed. He didn't go to bed.

Q Well, he went to sleep, didn't he?

A Yes, sir.

Q Well, now, what happened to the girl friend?

A She left.

Q What was her name?

(20)

A Dolores Becker.

THE COURT: What is it?

THE WITNESS: Dolores Becker.

BY MR. LANE:

Q What time did she leave?

A I don't know what time it was.

Q And what time did you say that Mr. Campbell left that evening?

A I didn't say.

Q You didn't say?

A No.

Q Well, suppose you tell us now what time he left.

A I don't know what time it was.

Q You don't know what time it was?

A No, sir.

Q You seem to remember all other times but you can—

THE COURT: Don't argue with the witness.

MR. LANE: Very well, your Honor.

BY MR. LANE:

Q As a matter of fact, Miss Johnson, when George was leaving your
home that evening at some hour, the younger children kissed him good-bye,
did they not?

A Yes, sir.

Q And, as a matter of fact, you were in the kitchen at the time,
were you not?

A No, sir.

(21)

Q The youngersters were in the kitchen when they kissed him goodbye,
were they?

A No.

Q Where were they?

A In the bedroom.

(21)

Q In the bedroom?

A Yes, sir.

Q They weren't in the kitchen?

A No, sir.

Q And, incidentally, you do use your kitchen door as an entrance to apartment, is that correct?

A Yes, sir.

Q Now, did you observe him kiss the children goodbye?

A (No answer.)

Q Did you watch him kiss the children goodbye?

A Yes, sir.

Q And, as a matter of fact, didn't you come up to him and say, "Kiss me goodbye."?

A No.

Q And, as a matter of fact, you threw your arms around him, isn't that correct?

A No.

Q As a matter of fact, you rubbed yourself against him?

A No.

Q And he threatened to tell your mother?

A No.

Q And that is why you went to the police the next morning? (22)

A No.

Q Why didn't you go that evening?

A Because I couldn't leave the kids in the house by themselves.

Q Your mother came home later, didn't she?

A Yes.

Q You didn't tell her about it then, did you?

A No.

Q You waited until the next morning, is that correct?

A Yes.

THE COURT: Wait a minute, what is your answer?

THE WITNESS: Yes.

BY MR. LANE:

Q What time did your mother get home that evening?

A I don't know.

Q Where were you?

(22)

A I was in the bed when mother came, Laying across the bed, rather.

Q And you don't know what time she came home?

A No.

Q But you didn't bother to get up and tell her and accuse this man, did you?

A No.

(23)

Q But he did come home with your mother, is that correct?

A I don't know.

Q Didn't you testify on direct examination that Campbell and your mother came home later that evening?

A No. Because I don't know when mother came home.

Q But you did testify that Campbell and your mother came home together, didn't you?

THE COURT: No, the witness did not so testify, Mr. Lane.

Q Miss Johnson, didn't you testify on direct examination that you saw your mother that evening?

A Yes.

Q You did?

A Yes.

Q And you said nothing about it? Is that right?

A Yes, sir.

Q Now you testified that this alleged act took place while you were standing against the kitchen wall, is that right?

A Yes.

Q Would you mind standing down, please, so the jury can see how tall you are?

(The witness stood down.)

MR. LANE: Thank you.

I think that is all, your Honor.

(24)

MR. CAPUTY: Just one question.

REDIRECT EXAMINATION

BY MR. CAPUTY:

Q Why didn't you tell your mother that evening?

A Because I was afraid of him.

MR. CAPUTY: That is all.

MR. LANE: Just one or two more questions, if your Honor please,

BY MR. LANE:

Q You say now that you were afraid of him?

A Yes, sir.

Q And did you know whether or not he was home then?

A Yes, sir.

Q Was he home or was he not?

A When mother came home?

Q When your mother came home?

A When mother, when I saw mother, she was sweeping the floor and she came over to me.

THE COURT: You will have to keep your voice up.

THE WITNESS: When I first saw mom, when she came home that evening, she was sweeping the floor and she came over to me and asked me what is the matter and I said nothing. And she took alcohol bottle down off the shelf and run it back and forth across my nose.

Q Back and forth where? (25-26)

A Back and forth.

Q Across your face?

A No, took the bottle and like I got the scent of it, and brought it back and forth like this, moving the bottle back.

Q The alcohol bottle?

A Yes. And last I remember.

THE COURT: You will have to keep your voice up.

THE WITNESS: The last thing I remember, she told me to go to bed. Take my clothes off and go to bed.

BY MR. LANE:

Q Now, on cross-examination just a few minutes ago, I understood you to say that you were laying across the bed. You didn't know what time it was when your mother came home?

A No, I didn't. Yes, I did.

Q She was sweeping the floor?

A Yes, she was sweeping the floor.

Q What time was this?

A I don't know what time it was.

MR. LANE: I think that is all.

MR. CAPUTY: That is all.

(25-26)

THE COURT: Step down.

(The witness retired from the witness stand.)

MR. CAPUTY: The next witness will be Andrew Johnson, your Honor.

ANDREW JOHNSON

(27)

DIRECT EXAMINATION

A I left my aunt's 7 o'clock and got home, 7:30.

(29)

Q And did you go into 1328 Columbia Road when you left your aunt's house?

A I didn't come right home. I stopped at a filling station.

Q Well, after you stopped there, did you go home?

A Yes, sir.

Q What time was it when you got home?

A Quarter of 8.

Q And did you go into the house?

A No, sir.

Q Tell us what, if--whom, if anyone, you saw when you got to 1328 Columbia Road?

A When I got there I--

THE COURT: Talk slow and loud. Go ahead.

THE WITNESS: When I was ready to take my bike upstairs, I seen George come out the front door.

BY MR. CAPUTY:

Q Is that George Campbell?

A Yes, sir.

Q Coming out of the front door where you were living?

A Yes, sir.

Q Did you talk to him?

A Yes, sir. I asked him, I asked him was Mom home.

Q And he answered you?

A Yes, sir.

Q What did he say?

(30)

A He said, well she was around on Harvard Street.

Q What did you do after that when he said that?

A Went around there with him on Harvard Street.

Q I can't hear you.

A Went around there with him on Harvard Street.

Q You went with him?

(30)

A Yes, sir.

Q Where else did you go, if any place?

A Then went up on, on 11th Street.

Q Then where else?

A Then after that, well came on back home.

Q Where did he go?

A Went in the grill.

Q Where?

A On 11th Street.

Q And after you left him, you went home?

A Yes, sir.

Q Now, what time was it when you got home?

A About 9 o'clock.

Q Did you get into the house?

A I waited a half hour.

Q You waited there a half hour?

A Yes, sir.

Q Well, what did you do when you got to 1328 Columbia Road where you live?

Q Now, it is my understanding when you approached the house, (33)
you saw George coming out, is that correct?

A Yes, sir.

Q What time was that?

A I don't know what time it was.

(34)

Q Pardon?

A I don't know what time it was.

Q You don't know what time it was?

A No, sir.

Q What time did you get back home after you left George?

A About nine o'clock.

Q Well, now, how is it that you know what time when you got back home but you don't know what time you met George?

A I didn't look at the clock.

Q Now, I will ask you this: Have you talked to anyone about this case since it is supposed to have happened?

A Yes, sir.

Q Who have you talked to? (34)

A The police and district attorney,

Q Police and who else?

A The D.A.

THE COURT: She said the D. A.

Q Have you talked to your mother about it?

A No, sir.

RUTH GLADYS JOHNSON (36)

DIRECT EXAMINATION

BY MR. CAPUTY:

Q Now after you had left home and gone to your mother's house (38)
and you had left George Campbell, when was the next time that you saw
him again on December 26th?

A On about 8 or 9 o'clock at night.

Q Did you return home to 1328 Columbia Road, Northwest, on the (39)
evening of December the 25th?

A Yes, I did.

Q And what time was it that you returned home?

A Between 10 and 11.

Q Was anyone with you at the time that you got home?

A Yes, me and George went home together.

Q Did you talk to Gladys that evening?

A Yes, I asked her what was wrong and she laid on the bed. And she
didn't give me no answer. She went to sleep.

CROSS EXAMINATION (42)

BY MR. LANE:

Q What do you mean, blacked out again?

A Well, she passed out. She didn't know anything after that.

Q What did she pass out--

A Well, she has these attacks ever since she was raped.

Q She has had what?

A And she passed out. She passes out.

DR. RICHARD B. PERRY (47)

DIRECT EXAMINATION

BY MR. CAPUTY

Q Now on December 27th, 1955, did you perform--what kind of (48)
an examination on Gladys E. Johnson did you perform?

A A pelvic examination.

Q Now, will you tell the Court and jury what, if anything, you (48)
found upon the examination through the use of the speculum in the vaginal
region?

A The only thing I found that was abnormal was a small half inch
tear on the floor of the vagina.

CROSS-EXAMINATION

(49)

BY MR. LANE:

Q Now from your examination, could you say that this was a fresh (51)
laceration on the vagina?

A If there had been a fresh laceration of the hymen, I could have
seen that.

Q I see. Now there was no fresh laceration, is that correct, of the
hymen?

A No, I didn't note any.

Q Now, with reference to the one-half tear on the floor of the vagina,
what could have caused that, doctor?

A Well, I can't say. Many things could have caused it. Any sudden
stretching force could have caused it but I couldn't say what.

Q Could it have been caused by a sneeze?

A No, I wouldn't think so.

Q Could it have been caused by a fingernail?

A A fingernail probably could have caused it.

Q And could it have been caused by any object such as a, well, a
fingernail, I mean a fingernail file?

A Anything that would scratch it.

Q So, it is not necessary, not necessarily so that this half inch
tear was caused by sexual intercourse, is that correct?

A Well, it is not necessary; it could be caused by other things.

GEORGE CAMPBELL, JR.

(66)

DIRECT EXAMINATION

(67)

BY MR. LANE:

Q What time did you get home?

(70)

A I got home around three o'clock.

Around three o'clock when I got home. So I woke up about an hour or an
hour and a half later, and I asked Gladys, fix something to eat. She said
yes, it's in the kitchen on the stove. So I went in the kitchen and when I
came back, the little baby, she had it--about a year old--and I always

you know, get toys for him, so I had a little toy for him. And I gave (70)
him the toy pistol and called the two little kids and told them to come
kiss daddy goodbye. She usually call me "daddy."

So I said, "Come kiss Daddy good-bye."

So I kissed the two little kids and kissed the baby in the crib and
walked out the front door into the kitchen where we were go out the house
and Gladys come from the front kitchen by the window and said, "You didn't
kiss me good-bye" like that. (71)

So I was getting ready to go out the door, I turned around to kiss
her on the jaw, like, we been doing, and she put her arms around me and
kissed me in the mouth. When she kissed me, she was wiggling like and I say,
if your mother know you did that, she probably break your neck just like
that.

So she said you are not going to tell her, are you? I said, no, just
don't do it no more.

So I left and walked on out the kitchen and walked in the hall. She
came to the top of the steps. She said, "Where are you going?"

I said, "I am going around my mother's to pick up your mother."

And went on down the steps, we lived on the third floor, and went on
out the door and met her brother. And he asked me--

Q You met her brother who was here this morning?

A Yes, Gladys' brother. And her brother asked me where was I going
and I told him I was going around to pick up his mother.

He says, "Can I go with you?"

(72)

I said, "Yes."

So we walked to 13th Street to 13th and Park Road there on 13th and
Park Road to 11th Street and I told him, I said, wait a minute, I am going
to stop past the grill to say

Q Now, did you pull Gladys into the kitchen?

(76)

A No, sir.

Q Did you sit her on your lap?

A No, sir.

Q Did you push her up against the wall?

A No, sir.

Q Did you pull her panties down and her dress up?

A No, sir, I ain't never touched the girl nowhere like that.

Q And did you push your private, into her vagina?

A No, sir.

(76)

Q In other words, the only thing unusual that happened between you and Gladys that evening was the fact that she had thrown her arms around you, is that correct?

A The way she kissed me and was wiggling in front, that is the only thing that happened and I told her about it right then.

Q All right. What did the girl say that happened? What did she say happened? (82)

A The girl say that I came home and ate and when I get ready to leave, I grabbed her and pushed her against the wall and told her to stoop down, and had sexual relations and pushed her on the floor. I tried to have sexual relations and pushed on the floor. This detective lady kept saying, "Don't say try, say he did it."

And she said, "yes, he had sexual relations with me but I was screaming and he pushed me on the floor and he went out the back way."

Q Isn't it a fact that you met the brother coming in the front way?

A Yes, sir.

CROSS EXAMINATION

BY MR. CAPUTY:

Q This charge has been placed against you only because Detective Irma Smith insisted upon saying that, say he did it, and not that he tried. Is that it, sir?

A No, sir. The girl at one time stated that I tried. And then, I spoke up and I said, now tell the people the truth. You can tell enough lies on me, just like that. I say, "Now, did I do it, or did I try to do it?" (83)

Q Now, what time did you leave the house then after you ate this food? (88)

A It was around 5:30 or 6 o'clock because it wasn't even dark. Because I know it get dark around 6 o'clock during the winter.

Q And you got home at 3?

A Around 3 or 3:30.

Q And you slept for how long?

A About an hour or so.

Q That is before you ate?

A Yes, sir, before I eat, yes, sir.

Q And that is after you had given her the request to prepare something to eat, isn't it?

A I give her a request to prepare me something to eat before (86)
I went to sleep.

Q Yes, and she prepared it, didn't she, right away?

A I don't know if she prepared it right away because I went to sleep.

Q Now was it at this time that you were leaving the house, about 5:30, that you say Andrew Horace Johnson?

A It was around, yes, when I was leaving the house, around 5:30.

Q You did not commit this offense on December the 26th? (96)

A No, sir, I haven't touched that girl or try to have sexual relationships, not since I been with her.

Q And other than this one time, December the 26th--

A That or no time.

Q And you met Horace about 5:30? (105)

A About 5:30, yes, sir.

Q Now other than the time that you went to 1438 Columbia Road (114)
and left at 5:30 on December the 26th, 1955, you were never back there up
until the time that you returned with Ruth Johnson, is that correct?

A No, sir, no, sir.

THE COURT'S CHARGE TO THE JURY (121)

I want to emphasize this point to you because the essence of
the case is that the defendant had sexual intercourse with a female child
under the age of sixteen years.

FILED IN OPEN COURT (131)

FEB 6 - 1956

HARRY M. HULL, Clerk

The Grand Jury charges:

On or about December 26, 1955, within the District of Columbia,
George Campbell, Jr., carnally knew and abused a female child named Gladys
E. Johnson, who was then under sixteen years of age, that is, about thirteen
years of age.

FILED (132)

FEB 10 1956

HARRY M. HULL, Clerk

PLEA OF DEFENDANT

On this 10th day of February, 1956, the defendant George Campbell, Jr.,
appearing in proper person and by his attorney, Eugene F. Lane, Esquire,
being arraigned in open Court upon the indictment, ~~the indictment charges~~
being ~~stated~~ read to him, pleads not guilty thereto.

The defendant is remanded to the District of Columbia Jail.

FILED

(134)

JUN 11 1956

HARRY M. HULL, Clerk

On this 8th day of June, 1956 came the attorney for the government and the defendant appeared in per and¹ by counsel, Eugene F. Lane, Esquire

It Is Adjudged that the defendant has been convicted upon his plea of² not guilty and a verdict of guilty of the offense of

CARNAL KNOWLEDGE

as charged³

and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of⁴

Three and One Half (3 1/2) years to Twelve (12) years

FILED

(135)

JUN 14 1956

HARRY M. HULL, Clerk

NOTICE OF APPEAL

Name and address of appellant -- GEORGE CAMPBELL, JR.

Name and address of appellant's attorney -- GILBERT R. GIORDANO

307 Century Building, 412 5th St., N. W.

Offense -- Carnal Knowledge

Concise statement of judgment or order, giving date, and any sentence

Verdict: Guilty--May 22, 1956

Sentence: 3 1/2 to 12 years-- June 8, 1956

Name of institution where now confined, if not on bail -- District of Columbia Jail

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the District of Columbia Circuit from the above-stated judgment.

June 14 1956

Date

/s/ George Campbell, Jr.

/s/ Gilbert R. Giordano

GILBERT R. GIORDANO

Attorney for Appellant.

FILED

(138)

JUN 29 1956

HARRY M. HULL, Clerk

DESIGNATION OF RECORD ON APPEAL

The Clerk of the Court will please prepare the following record for the
U. S. Court of Appeals for the District of Columbia Circuit.

1. The Indictment
2. The Plea
- Oral { 3. Motion for Acquittal
- (4. Order denying motion for acquittal
5. The verdict
6. Transcript and proceedings of trial (with exception of voir
dire examination of jury panel, opening statement of both
counsel, and closing statement of both counsel.
7. This designation of record.

11-11-56
925-5-4825
11/1/56
(2)

BRIEF FOR APPELLEE

**United States Court of Appeals
For the District of Columbia Circuit**

No. 13443

United States Court of Appeals
For the
District of Columbia Circuit

FILED OCT 8 1956

GEORGE CAMPBELL, JR., *Appellant,*

v.

UNITED STATES OF AMERICA, *Appellee.*

Joseph W. Stewart
CLERK

**Appeal From the United States District Court for the
District of Columbia**

OLIVER GASCH,
United States Attorney.

**LEWIS CARROLL,
VICTOR CAPUTY,
NATHAN J. PAULSON,**
*Assistant
United States Attorneys.*

H. U. 11/1/56
D.L.B. - W. - 1025
②
BRIEF FOR APPELLEE

**United States Court of Appeals
For the District of Columbia Circuit**

No. 13443

*United States Court of Appeals
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FILED OCT 8 1956

GEORGE CAMPBELL, JR., Appellant,

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District of Columbia**

OLIVER GASCH,
United States Attorney.

**LEWIS CARROLL,
VICTOR CAPUTY,
NATHAN J. PAULSON,**
*Assistant
United States Attorneys.*

QUESTIONS PRESENTED

Where the complaining witness, thirteen years of age, testified that she had been carnally abused by appellant and in support of such testimony evidence is introduced to show that appellant was at the scene of the occurrence at the time alleged; that the child was in a dazed condition and in fear of appellant, that complaint to police was made the next day, that a physical examination disclosed a tear in the vagina which could have been caused by the insertion of a penis; in the opinion of the appellee the following questions are presented:

1. Was there sufficient corroborative evidence produced to warrant sending the case to the jury?

2. Where appellant's counsel caused the mother to make a certain statement by virtue of his probing questions and to which he made no motion to strike, did the trial court commit error by not striking the answer on its own initiative? Was such statement prejudicial per se?

3. Where appellant failed to object to a portion of the trial court's charge which he now alleges was an assumption of guilt, may he assert error in this Court?

4. Whether error was committed by lack of a preliminary examination of the complaining witness as to her capacity to testify although she was later qualified by the Government before any possible prejudicial testimony to appellant could be introduced.

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**United States Court of Appeals
For the District of Columbia Circuit**

No. 13,443

GEORGE CAMPBELL, JR., *Appellant*,

v.

UNITED STATES OF AMERICA, *Appellee*.

**Appeal From the United States District Court for the
District of Columbia**

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

On February 6, 1956, there was filed in the District Court an indictment charging appellant with violation of Title 22, Section 2801 of the District of Columbia Code in that appellant carnally knew and abused a female child of thirteen years of age (R. 131). On February 10, 1956, appellant, while represented by counsel, pleaded not guilty (R. 132). On May 22, 1956, appellant was found guilty as indicted, by a jury. (R. 133). He was thereafter sentenced to a term of imprisonment for a period of from three and one-half years to twelve years (R. 134). Appellant now appeals from the judgment of the court (R. 135).

Gladys E. Johnson testified that she resided with her mother, two sisters and a brother (R. 4). Appellant resided in the same place (R. 5). On December 26, 1955, Gladys' mother and brother left the house at about 1 p.m. leaving her at home with two small children. Sometime between the half-hour of 7:30 p.m. and 8 p.m., appellant came to the house and asked Gladys to "fix him something to eat" (R. 6). While she did so, he lay down on the bed and went to sleep. Although the food was thereafter prepared, she could not awaken him and consequently she returned the food to the stove. (R. 7).¹

Shortly after she did so, appellant awoke and asked for the food. When told that it was on the stove he stated he couldn't find it and asked her to get it (R. 8). After she went to the kitchen and placed the food on the table, appellant ate it (R. 8). Continuing her testimony she stated:

"And then he came back in the room and pulled me out of the chair and he pulled me in the kitchen and there was a chair setting between the door * * * and he pulled me in the kitchen and set down in the chair and pulled me on his lap. And then the kids came out in the kitchen, my sisters, Sandra and Caroline, and he told them to go back in the room and they went back in the room, and he pushed me up against the wall. And he pulled his pants down and pulled my panties down and pulled my dress up, and then he pushed his private in me. And I screamed. * * * He said if you tell anybody I kill you or I get somebody to kill you for me". (R. 8, 9).

She saw her brother about one half or one hour after appellant left the house (R. 9). She did not tell her mother that evening "because I was afraid of him" (R. 24), appellant being present at the time (R. 39, 42).

Andrew Johnson testified that he was the brother of Gladys and lived at home with her, his mother and sisters. He stated that he left home early that morning (R. 28)

¹ At this point in the testimony she was qualified as a witness although this was not requested by appellant or the Court (R. 7).

and returned to the house at about 7:30 p.m. He saw appellant come out of the front door at about 7:45 p.m. (R. 29). He talked with him, in front of the house and then went to an address on Harvard Street with him (R. 29). Subsequently he left appellant and proceeded to return home again at 9 p.m. when he proceeded to put away his bicycle. He attempted to gain access to the house and after knocking on the door for a half hour, his sister (Gladys) came to the door (R. 30, 31). He stated that at that point "she acted like she didn't know me" (R. 32). He did not see his mother later that night (R. 32). Upon cross-examination he stated that he "never had seen his sister in that condition before" (R. 35).

Ruth Gladys Johnson testified that she was the mother of the complaining witness and that she had left the house with appellant at about 12:30 p.m. on December 26, 1955 (R. 37). She stated that she subsequently parted from appellant and next saw him that same night somewhere between 8 and 9 p.m. (R. 38). She returned home with him between 10 and 11 p.m. (R. 39). Regarding gaining admittance to the house she testified as follows:

"Well, I had to knock on the door quite a long while before Gladys came to the door and when she came to the door, she asked who was I and she was in quite a daze". (R. 39).

When asked if she had spoken with the child that evening, she stated:

"Yes, I asked her what was wrong and she laid on the bed. And she didn't give me no answer. She went to sleep" (R. 39).

Under cross-examination of Mrs. Johnson regarding the dazed condition of the complaining witness, the following testimony was elicited by appellant's counsel's probing:

"A. Well, I asked her what was wrong with her. And she said she didn't know.

Q. She said she didn't know?

A. Yes and that is all she said. She blacked out again.

Q. What do you mean blacked out again?

A. Well she passed out. She didn't know anything after that.

Q. What [sic] ~~Why~~ did she pass out?

A. Well, she has these attacks ever since she was raped.

Q. She has what?

A. And she passes out. She passes out." (R. 41, 42).

No motion to strike the answer was made by counsel under any grounds. She further stated that appellant was there at the time but said nothing.

Dr. Richard B. Perry testified that he was a physician at D. C. General Hospital and had performed a pelvic examination upon the complaining witness on December 27, 1955 (R. 48). He stated that "the only thing I found that was abnormal was a small half inch tear on the floor of the vagina" (R. 48). It was inside the vaginal tract (R. 49) and "the laceration could have been caused by the insertion of a penis" (R. 52).

Private Milton E. Washington of the Metropolitan Police testified that he saw the complaining witness on December 27, 1955 at which time "she was a little incoherent, I could hardly understand her" (R. 54).

Detective Harvey Mattingly of the Metropolitan Police testified that the complaining witness repeated her story in the presence of appellant and the latter stated that had been drinking and didn't remember messing with her (R. 57).

Appellant testified in his own behalf. He denied the prosecuting witness' story. He stated that she had fabricated the entire story because he had admonished her for her actions to him that day and threatened to tell her mother. He stated that she had insisted upon being kissed and when this act took place she had rubbed her body meaningfully against his. He also testified that he had caught her in the act of sexual intercourse at a prior time with one of her boy friends. He placed himself on the scene by admitting that he saw and spoke with Horace at

the front door of the house, not at about 7:30 but at about 5:30 p.m. (R. 105). He admitted to two prior convictions.

No requests for instructions were made nor were any exceptions taken to the court's charge.

STATUTE AND RULE INVOLVED

22 D.C.C. § 2801 provides:

"Definition and penalty.—Whoever has carnal knowledge of a female forcibly and against her will, or carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for not more than thirty years: *Provided*, That in any case of rape the jury may add to their verdict, if it be guilty, the words 'with the death penalty,' in which case the punishment shall be death by electrocution: *Provided further*, That if the jury fail to agree as to the punishment the verdict of guilty shall be received and the punishment shall be imprisonment as provided in this section."

F.R. Crim. P., 30 provides:

"Instructions.—At the close of the evidence or at such earlier time during the trial as the court reasonably directs, any party may file written requests that the court instruct the jury on the law as set forth in the requests. At the same time copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to their arguments to the jury, but the court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of his objection. Opportunity shall be given to make the objection out of the hearing of the jury."

SUMMARY OF ARGUMENT

Circumstantial evidence of proven facts in addition to the testimony of the complaining witness was sufficient to send the case to the jury even though appellant in his

testimony denied the charge. Where such proven facts consist of the testimony of the occurrence, the placing of appellant at the scene of the crime at the time alleged, prompt complaint under the circumstances, confrontation and medical testimony, the trial judge, must submit the case to the jury.

Since the statement made by the mother of the child was made as a result of probing questions by appellant's counsel and since he made no motion to strike said testimony, he cannot for the first time raise this question on appeal. Furthermore, the statement was not prejudicial per se.

The record discloses that the trial court's charge was complete and comprehensive. No objections were made to the charge or any portion thereof nor were any requests made for either additional instructions or clarification. Appellant cannot claim prejudice where he fails to comply with Rule 30 of the Federal Rules of Criminal Procedure. Furthermore, the portion of the charge now claimed to be error consisted of a one sentence explanation of the gravamen of the Government's case and was not an assumption of guilt.

Appellant failed to object to the complaining witness' testifying before a formal qualification took place. The record discloses that the witness was qualified to testify and was actually qualified by the Government before any possible prejudice could result. There is no rule in the District of Columbia which conclusively presumes that a child under a certain age lacks capacity to testify.

ARGUMENT

I

There Was Sufficient Evidence of Corroboration to Warrant a Denial of Appellant's Motion for Judgment of Acquittal.

The rule of law concerning motions for judgment of acquittal has long been settled in this jurisdiction. In *Curley v. United States*, 81 U.S. App. D.C. 389, 160 F.2d 229 (1947), *cert. denied*, 331 U.S. 187 this Court stated, p. 232:

“ . . . The true rule, therefore, is that a trial judge, in passing upon a motion for directed verdict of acquittal, must determine whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt. If he concludes that upon the evidence there must be such a doubt in a reasonable mind, he must grant the motion; or, to state it another way, if there is no evidence upon which a reasonable mind might fairly conclude guilt beyond a reasonable doubt, the motion must be granted. *If he concludes that either of the two results, a reasonable doubt or no reasonable doubt, is fairly possible, he must let the jury decide the matter. . . . But if a reasonable mind might fairly have a reasonable doubt or might not fairly have one, the case is for the jury, and the decision is for the jurors to make.*” (Emphasis supplied)

It has been well settled for many years that in the District of Columbia corroboration of the testimony of a complaining witness who has been carnally abused is sufficient to justify a trial judge to submit the issue to the jury. The courts have recognized that eye witnesses to such heinous crimes are difficult, if not practically impossible, to find. Consequently cases involving this type of felony may be proved by the introduction of evidence, circumstantial in character, to corroborate the testimony of the complaining witness. *Ewing v. United States*, 77 U.S. App. D.C. 14,135 F.2d 633, *McGuinn v. United States*, 89 U.S. App. D.C. 197, 191 F.2d 477, *Walker v. United States*, 96 U.S. App. D.C. 148, 223 F.2d 613.

The proven facts in the instant case remove it from the realm of conjecture and speculation. The complaining witness clearly and unequivocally testified to appellant's acts. Her testimony was unshaken under cross-examination. In support thereof the Government proved:

(1) Appellant was seen leaving the premises just shortly after the acts were committed (R. 29). He testified that he had been in the house and had spoken to the child's

brother at the front door but stated that it was 5 p.m. not later.

(2) Under all the circumstances, the complaining witness, reported the matter with promptitude. She testified that appellant threatened to kill her or have her killed if she told anyone (R. 9). The first time that she saw her mother after the occurrence was late in the same evening when appellant was present. She did not tell her mother then "because I was afraid of him" (R. 24). Her older brother testified that when he returned home, it required a half hour's knocking on the door before his sister responded and "she acted like she didn't know me" (R. 32). He "never had seen his sister in that condition before" (R. 35). Her mother corroborated the dazed condition of the child by stating that when she arrived home it took a long time for the child to come to the door; "she asked who was I and she was in quite a daze" (R. 39). This condition carried over to the next day when Private Washington of the Metropolitan Police stated "she was a little incoherent. I could hardly understand her" (R. 54).

(3) Appellant was confronted by the child the next day. Her testimony that he had abused her was unshaken and was supported by the testimony of Policeman Mattingly and Policewoman Smith. Mattingly stated that when the child repeated her story in the presence of appellant, the latter stated that he had been drinking and didn't remember "messing" with her (R. 57).

(4) There was sufficient medical evidence. Dr. Richard B. Perry testified that he had performed a pelvic examination upon the child the day after the occurrence and found as abnormal a small half inch tear on the inside floor of her vagina which laceration could have been caused by the insertion of a penis (R. 48, 49, 52).

It is the Government's contention that the proven facts set forth above constituted sufficient corroboration of the testimony of the child. *Ewing v. United States, supra*, *McGuinn v. United States, supra* and *Walker v. United States, supra*. These facts were sufficient to warrant send-

ing the case to the jury and to deny the motion for a verdict of acquittal. Appellant's testimony which attempted to refute the prosecution's evidence was of a nature to create an issue of fact for the jury.

II

The Mother's Statement Was Not Caused by the Government Nor Was It Prejudicial.

Upon direct examination, the child's mother testified that after she had arrived home with appellant and had found the child in a dazed condition she endeavored to find out what was amiss. She stated that she had asked what was wrong; that the child lay on the bed; that she didn't receive any answer and that the child went to sleep (R. 39).

Appellant now complains of testimony elicited by his attorney upon cross-examination and asserts that it was prejudicial. The following colloquy took place: (R. 41, 42)

"A. Well, I asked her what was wrong with her. And she said she didn't know.

Q. She said she didn't know?

A. Yes and that is all she said. She blacked out again.

Q. What do you mean blacked out again?

A. Well, she passed out. She didn't know anything after that.

Q. What did she pass out?

A. Well, she has these attacks ever since she was raped.

Q. She has what?

A. And she passes out. She passes out."

It is surely not the obligation of the Government to advise appellant's counsel to move to strike the answers to questions propounded by him. In fact, it would appear that the tenor of the questions as they proceeded would indicate some such answer would be given. If counsel believed as a matter of trial technique that this line of cross-examination would assist in the defense, he should not now be permitted to assert that because the answers were not

in his favor he has become prejudiced. *Cf. Johnson v. United States*, 318 U.S. 189, 201, 63 S.Ct. 549, 87 L.Ed. 704 (1943). He made no motion to strike the answer from the record and is precluded from raising that point in this Court. In *United States v. Hack*, 205 F.2d 723 (7th Cir. 1953), the Court stated at page 727:

"Where defendant does not object to the admission of objectionable evidence during the trial, such objection is waived and cannot be raised for the first time on motion for a new trial (or) on appeal. *United States v. Kadison*, 7 Cir., 145 F.2d 525, 526; *Burton v. United States*, 80 U.S. App. D.C. 208, 151 F.2d 17, 18, 19."

In the instant case, not only was there no objection or motion to strike but the answers to which there is assigned error stemmed from the affirmative acts of appellant.

III

The Trial Court's Instructions Were Comprehensive, Complete and Without Error. Appellant Asked for No Additions Thereto Nor Did He Object to Any Portion Thereof.

Appellant for the first time asserts that the trial court erred in its instructions to the jury. He failed to request the court to charge or instruct the jury upon any points of law nor upon the specific point he now attempts to put in issue (R. 129). Rule 30, Federal Rules of Criminal Procedure, provides in part:

"* * * No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the ground for his objection."

It is well settled that a failure to comply with this Rule constituted a bar to the claim that the trial court committed error in its charge. *Villaroman v. United States*, 87 U.S. App. D.C. 240, 242, 184 F.2d 261, 262 (1950). In *United States v. Furlong*, 194 F.2d 1 (7th Cir. 1952) the Court, in discussing Rule 30, stated,

"It is a salutary rule, for its purpose is to give the judge an opportunity to make any correction which he thinks is proper and, thus, to minimize the possibility of error. *Hower v. Roberts*, 8 Cir. 153 F.2d 726. It is intended to prevent a litigant from taking advantage after verdict, of the giving of an erroneous instruction to which he failed to call attention in time to afford the court an opportunity to correct it. *Palmer v. Miller*, 8 Cir. 145 F.2d 926. Unless the objection is made before verdict a reviewing court is powerless to consider it; it cannot be raised for the first time on motion or on appeal." (Citations omitted).

See also *William L. Pitts v. United States*, — U.S. App. D.C. — (decided October 4, 1956, Ct. Op. No. 13333).

In any event, there was no error in the case at bar. A review of the complete charge discloses that it was very comprehensive. The statement referred to by appellant merely sets forth the gravamen of the crime charged. It reads as follows:

"I want to emphasize this point to you because the essence of the case is that the defendant had sexual intercourse with a female child under the age of sixteen years."

The trial judge had admitted appellant's testimony of prior sexual acts of the complaining witness with another person for the purpose of permitting an attack on her credibility. In context with the entire charge, the Government cannot agree that the statement was an assumption of guilt on the part of the trial judge "as to the very fact in issue in the case". The instructions contained all the elements of the crime charged, the purpose of permitting evidence of prior acts, the law on corroboration, the presumption of innocence, the Government's burden of proof beyond a reasonable doubt, weight of testimony, credibility of witnesses and thier demeanor, an instruction on the importance of looking into the conduct and character of the complaining witness in conjunction with her statements and the lesser offenses including the verdict of not guilty.

IV

The Trial Court Did Not Commit Error by Permitting the Complaining Witness to Testify.

Appellant contends that the trial court committed error by failing to qualify the complaining witness before permitting her to testify. The Government believes that this argument is without merit.

In *Doran v. United States*, 92 U.S. App. D.C. 305, 205 F.2d 717, this Court held qualified a ten year old child who was a corroborating witness and who did not know what an oath was or meant. It stated at page 307:

"There is no rule in the District of Columbia which conclusively presumes that a child under a certain age lacks the capacity to testify. See, *In re Lewis*, D.C. Mun. App. 1952, 88 A.2d 582. The competency of a child is a matter within the discretion of the trial judge and his decision will not be disturbed unless clearly erroneous. *Wheeler v. United States*, 1895, 159 U.S. 523, 16 S.Ct. 93, 40 L.Ed. 244; 2 Wigmore, Evidence, Sec. 507 (3rd ed. 1940), for he is in a much better position than any appellate tribunal to consider and to weigh all the palpable factors which should be taken into account, such as the attitude and demeanor of the witness, the extent of her intelligence and the degree of moral responsibility of which she might be capable. *Williams v. United States*, 3 App. D.C. 335."

In the instant case, before any accusation was made, the Government questioned the child who was thirteen as to her schooling. She replied that she attended Junior High School. As to whether she knew what an oath was, she replied in the affirmative and stated that it meant to tell the truth (R. 7). Her testimony prior to these questions and subsequent thereto disclosed that from her demeanor, attitude intelligence and degree of moral responsibility of which she was capable, she was qualified to testify in this proceeding.

In fact it seems apparent that because of her qualifications appellant raised no objections to her testimony on that score nor did he request the trial judge to preliminarily question the witness for the purpose of determining whether

she could qualify. Here again, the Government contends that appellant for the first time in this Court cannot raise this point where he has waived it below. His default falls squarely within the cases of *United States v. Hack, supra*, p. 10, and *United States v. Furlong, supra*, p. 10.

CONCLUSION

WHEREFORE, it is respectfully submitted that the judgment of conviction should be affirmed.

OLIVER GASCH,
United States Attorney.

LEWIS CARROLL,
VICTOR CAPUTY,
NATHAN J. PAULSON,
Assistant
United States Attorneys.